SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1934

No. 15

CHARLES L. McNALLY, PETITIONER,

vs.

HENRY C. HILL, WARDEN UNITED STATES NORTHEASTERN PENITENTIARY, LEWISBURG, PA.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT

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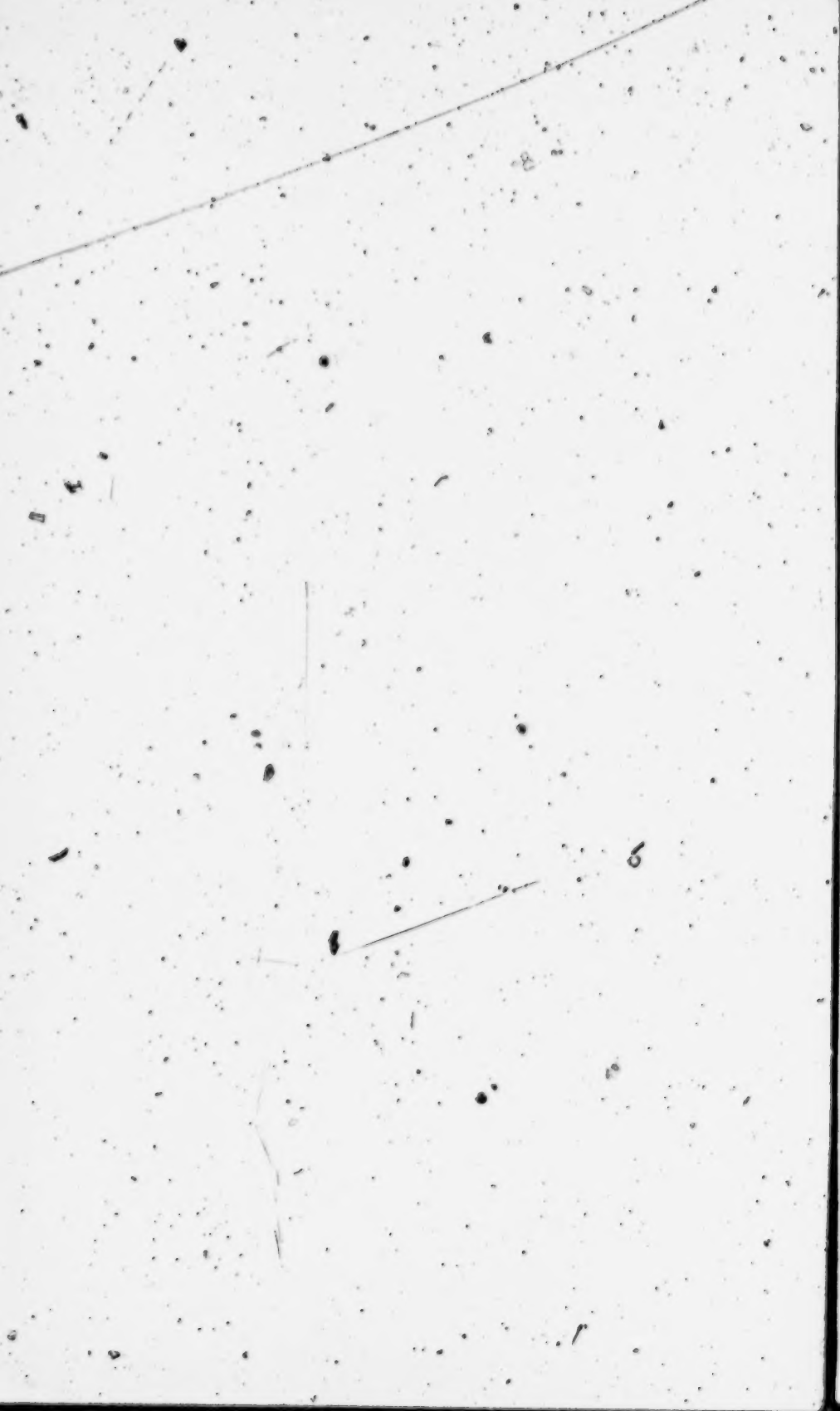

IN THE

District Court of the United States,

MIDDLE DISTRICT OF PENNSYLVANIA.

No. 8. HABEAS CORPUS.

THE UNITED STATES *v.* CHARLES L. McNALLY *v.* HENRY C. HILL, Warden, U. S. Penitentiary, Lewisburg, Pennsylvania.	Attorneys: For United States: For Defense: Nathan Fink, Esq., Scranton, Pa.

DOCKET ENTRIES.

Apr. 6, 1933.	Petition for writ of Habeas Corpus and Order to show cause returnable April 18, 1933, at Scranton, Pennsylvania.
Apr. 12, 1933.	Marshal's return of service of certified copy of petition and rule executed.
May 16, 1933.	Order dismissing petition and discharging rule.
Aug. 11, 1933.	Assignment of errors.
Aug. 25, 1933.	Notice of Appeal to the United States Circuit Court of Appeals for the Third Circuit and Petition for allowance of Appeal, and Order allowing the appeal. (J)
Aug. 25, 1933.	Citation issued to Henry C. Hill, Esq. and handed Mr. Fink.

Aug. 25, 1933. Bond covering Costs on Appeal, AMERICAN SURETY COMPANY OF NEW YORK, Amount of Bond $250.00.

Aug. 25, 1933. Præcipe for record on appeal for preparation of transcript of record.

Aug. 25, 1933. Citation returned "Now Aug. 25, 1933, service admitted and copy received of the within citation, H. L. Hill".

Aug. 25, 1933. Complete files sent to S. W. Hofford, Clerk of Court at Scranton, Pa.

Aug. 28, 1933. Affidavit of service of notice of appeal. Order directing all original files to be mailed Clerk, U. S. Circuit Court of Appeals. All original files mailed Wm. P. Rowland, Clerk, U. S. Circuit Court of Appeals.

PETITION FOR WRIT OF HABEAS CORPUS.

IN THE DISTRICT COURT OF THE UNITED STATES,
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA.

No. 8. HABEAS CORPUS.

Charles L. McNally

v.

Henry C. Hill, Warden, United States Penitentiary, Lewisburg, Pennsylvania.

To the Honorable the Judges of the said Court:

Your petitioner, CHARLES L. MCNALLY, by his attorney, Nathan Fink, Esq., respectfully represents:

1. That at the June term of the District Court of the United States within and for the Eastern District of New York, in the year 1931, the following true bills of indictment were brought against your petitioner and others by a Grand Jury of the United States of America:

A. Indictment No. 28944, containing three counts, charging your petitioner and other defendants therein named with violation of an Act of Congress, Title 18, U. S. C. A. Sections 88 and 408, as follows:

(a) Count One of said indictment charging your petitioner and other defendants therein named with having conspired to unlawfully, knowingly, feloniously, and wilfully, transport or cause to be transported in

interstate commerce, motor vehicles stolen from the true owners at the Borough of Brooklyn, County of Kings, City, State, and Eastern District of New York; and that the petitioner and other defendants therein named conspired to sell the said motor vehicles, so transported, in interstate commerce, etc.; said count containing also overt acts in pursuance of such conspiracy.

(b) Count Two of said indictment charging that your petitioner and other defendants therein named did unlawfully, knowingly, feloniously, and wilfully transport in interstate commerce motor vehicles stolen from the true owners at the Borough of Brooklyn, County of Kings, City, State, and Eastern District of New York.

(c) Count Three of said indictment charging that your petitioner and other defendants therein named, on or about the twelfth day of February, 1930, at Jersey City, in the State of New Jersey, did unlawfully, knowingly, feloniously, and wilfully sell a certain motor vehicle, which said motor vehicle had theretofore been transported in interstate commerce from the Borough of Brooklyn, County of Kings, City, State, and Eastern District of New York, to Jersey City in the State of New Jersey, the said defendants knowing that the said car so sold had been stolen and transported in interstate commerce. Said indictment and said three counts in said indictment being more fully set forth in copies of same attached hereto and marked Petitioner's Exhibit "A."

B. Indictment No. 28945, containing one count, charging your petitioner and other defendants therein named with having conspired unlawfully, knowingly, feloniously, and wilfully, to transport, and cause to be transported and to sell in interstate commerce a certain

motor vehicle described in said indictment, which had been stolen from the true owner at the Borough of Brooklyn, County of Kings, City, State, and Eastern District of New York. Said indictment containing also overt acts committed in pursuance of such conspiracy. Said indictment is more fully set forth in copies of same attached hereto and marked Petitioner's Exhibit "B."

2. That on November 25, 1931, at the trial of your petitioner and other defendants upon aforesaid indictment No. 28944, a verdict of guilty was rendered by a jury against your petitioner and said other defendants, your petitioner having been found guilty of all three counts in said indictment. That on September 28, 1931, at the trial of your petitioner and other defendants upon aforesaid Indictment No. 28945, a verdict of guilty was rendered by a jury against your petitioner and the said other defendants.

3. That in pursuance of the aforesaid verdicts of guilty, your petitioner was sentenced by the judges of the said District Court of the United States for the Eastern District of New York, as follows:

A. Upon Count One of Indictment No. 28944, two years' imprisonment at a penitentiary or prison camp without costs; upon Count Two of said indictment, four years' imprisonment at a penitentiary or prison camp without costs; upon Count Three of said indictment, four years' imprisonment at a penitentiary or prison camp without costs. Sentence on Count One to run concurrently with sentence on Counts Two and Three; sentence on Counts Two and Three to run consecutively. Said sentences to date from the thirtieth day of November, 1931.

B. Upon Indictment No. 28945, two years' imprisonment in a penitentiary or prison camp, without costs. Sentence to date from the tenth day of December, 1931.

4. That in pursuance of the aforesaid sentences your petitioner was committed to the United States Penitentiary at Leavenworth, Kansas, to serve and perform said services. That subsequently your petitioner was transferred to the United States Penitentiary at Lewisburg, Pennsylvania; which said penitentiary is within the jurisdiction of your Honorable Court. Copies of the writs of commitment and marshal's returns are hereto attached and marked Exhibits "C" and "D".

5. That your petitioner is at the date of this petition serving and performing the aforesaid sentences in the said United States Penitentiary at Lewisburg, Pennsylvania.

6. That Count Three of Indictment No. 28944 charges, as aforesaid, that your petitioner and other defendants therein named unlawfully and knowingly sold a stolen motor vehicle in Jersey City, in the State of New Jersey, after said vehicle had been transported in interstate commerce; that said Count Three of said indictment therefore charges your petitioner with an offense which it alleges was committed in Jersey City, in the State of New Jersey, which city and State are outside of the jurisdiction limits of the said United States District Court for the Eastern District of New York.

7. That the said District Court of the United States for the Eastern District of New York was without power, authority and jurisdiction to impose the judgment and sentence of four years' imprisonment

for the offense charged in the said third count of said indictment, for the reason that the offense charged was alleged to have been committed outside of the jurisdictional limits of said district court. That the said district court exceeded its power, authority and jurisdiction in imposing sentence upon your petitioner upon the verdict rendered by the jury on the trial of said petitioner upon the offense charged by the said third count of said indictment; that the verdict, judgment, and commitment founded upon said third count of said indictment are invalid.

8. That the verdict, judgment, and commitment under which your petitioner is now serving said four years' sentence imposed upon said Count Three of said indictment, are null and void, as your petitioner under both Article 3, Section 2, Clause 3, of the Constitution of the United States, and the Sixth Amendment thereto, could be tried for the offense described and alleged in said third count of said indictment only in the State and district wherein the crime charged therein was alleged to have been committed, to wit, the District Court of the United States for the District of New Jersey.

9. That the sentences which your petitioner is serving at the aforesaid penitentiary are valid only to the extent imposed upon the petitioner on Counts One and Two of Indictment No. 28944, to wit, two years' imprisonment and four years' imprisonment, respectively, said terms running concurrently and commencing as of November 30, 1931; and on Indictment No. 28945, to wit, two years' imprisonment, commencing as of December 10, 1931. That the maximum imprisonment validly imposed upon your petitioner is therefore not more than four years' imprisonment.

10. That by Act of Congress, Title 18, U. S. C. A. No. 714, it is provided that a prisoner serving a sentence of imprisonment in a United States penitentiary is entitled, upon good behavior during the period of service and performance of such sentence, to parole upon application therefor when one-third of such prisoner's sentence is served and performed.

11. That on the thirtieth day of March, 1933, your petitioner had served and performed one-third of the said valid sentences of four years.

12. That under the regulations of the Parole Board of the said United States Penitentiary at Lewisburg, Pennsylvania, your petitioner is entitled, under the facts herein recited, to make application for parole and to have such application heard and decided by the aforesaid Board at its quarterly meeting in May, 1933.

13. That your petitioner is, because of the void and invalid sentence above described, being deprived of his right under the law to make application before the Parole Board of said Penitentiary and to be heard by the said Board at the time mentioned in paragraph 12, above.

14. That your petitioner's behavior during the period of service of the aforesaid sentences was good and that he violated no rules of the said penitentiary and suffered no demerits which might cause the period of imprisonment to be extended beyond the time provided by the said Act of Congress, mentioned in paragraph 9, above.

WHEREFORE, your petitioner prays this Court to order the issuance of a writ of Habeas Corpus in this cause directed to Henry C. Hill, Warden of the said

United States Penitentiary at Lewisburg, Pennsylvania, ordering and directing him to have the body of the petitioner before this Honorable Court at a date to be fixed by the said Court, at which time he further prays the Court that he shall be granted a discharge from the service of the said invalid and void sentence of four years imprisonment; and for such other and further relief as to the Court may seem proper.

And he will ever pray.

NATHAN FINK,
Attorney for Petitioner.

April 6, 1933.

STATE OF PENNSYLVANIA,
COUNTY OF LACKAWANNA, } *ss.:*

NATHAN FINK, being duly sworn, deposes and says that he is attorney for the petitioner named in the foregoing petition, that he has authority to make this affidavit for and on behalf of said petitioner and does so, that he has read the contents thereof, and that the statements made therein are true to the best of his information and belief.

NATHAN FINK.

Sworn to before me this sixth day of April, 1933.

CATHERN G. BREEN.
(Seal) *Notary Public.*
My commission expires March 9, 1935.

ORDER TO SHOW CAUSE.

(Filed April 6, 1933.)

Now, this sixth day of April, 1933, upon presentation of the foregoing verified petition for the issuance of a writ of habeas corpus directed to Henry C. Hill, Warden of the United States Penitentiary at Lewisburg, Pennsylvania, to have the body of the petitioner before this Court at a date to be set by the Court, and to discharge the said petitioner from the service of a sentence of four years imprisonment, alleged by the petitioner to be invalid and void, and upon due consideration of said petition, rule is granted to show cause why a writ of habeas corpus should not issue, as prayed for in said petition, returnable to next argument court at Scranton, Pennsylvania, on Tuesday, April 18, 1933.

ALBERT W. JOHNSON,
U. S. District Judge.

PETITIONER'S EXHIBIT "A."

EASTERN DISTRICT OF NEW YORK, *ss.:*

I, Percy G. B. Gilkes, Clerk of the District Court of the United States for the Eastern District of New York, do hereby certify that the ~~foregoing~~ annexed is a true copy of an original Indictment with Endorsements on file and remaining of record in my office.

IN TESTIMONY WHEREOF, I have caused the Seal of said Court to be hereunto affixed, at the Borough of Brooklyn, in the Eastern District of New York, this 15th day of December, in the year of our Lord one thousand nine hundred and ~~twenty~~ thirty two and of the Independence of the United States the one hundred and ~~forty~~ fifty-seventh.

Percy G. B. Gilkes, *Clerk*,
By S R Feuer, *Deputy Clerk*.

DISTRICT COURT OF THE UNITED STATES OF AMERICA
EASTERN DISTRICT OF NEW YORK

At a Stated Term of the District Court of the United States of America, for the Eastern District of New York, begun and held in the Borough of Brooklyn, City of New York, within and for the District aforesaid, on the third day of June in the year of our Lord one thousand nine hundred and thirty-one, and continued by adjournment to and including the thirtieth day of June in the year of our Lord one thousand nine hundred and thirty-one.

EASTERN DISTRICT OF NEW YORK, *ss:*

The Grand Jurors of the United States of America, within and for the district aforesaid, on their oaths present that

JACK BERMAN,
alias Leo Berman,
alias Leo David,
alias Jack Davis
alias Jack Martin,
alias Jack Larson,
alias Jack Lusser,
alias Jack Loesser,
CHARLES L. MCNALLY,
alias Charles McDermott,
alias "Mack",
D. E. HAWKINS,
alias Buddy Hawkins,
alias "Two Gun" Hawkins,
alias D. Van Horn,
alias Thomas E. O'Brien,
alias Harry A. Schwartz,
FRANK MURRAY,
alias "Buck" Murray,
WILSON W. BADEN,
FRED BECHER,
alias Fred Beacher,
MURRAY LITTMAN,
ARTHUR KOCH,
alias Otto Koch,
DAN LEAHY,
alias Laby,
HENRY "DOE" (last name being fictitious),

and

JOHN DOE,

hereinafter called the defendants, on or about and between the 1st day of September, 1929, up to and including the date of the filing of this indictment, at the Borough of Brooklyn, County of Kings, City, State and Eastern District of New York, and within the jurisdiction of this Court, at the Borough of Manhattan, City, State and Southern District of New York, and in the States of New Jersey, Pennsylvania, Massachusetts, Alabama, and Tennessee, and in divers other places to the Grand Jurors unknown, did unlawfully, wilfully, knowingly, and feloniously conspire, combine, confederate, and agree among themselves, and with Lynn Kennemer and William S. Hayes alias Wilson, and divers other persons to the Grand Jurors unknown, to unlawfully, wilfully, and knowingly violate Title 18, United States Code, Section 408, in the following manner, that is to say: that at the times aforesaid, and at the places aforesaid, the aforementioned defendants, JACK BERMAN, alias Leo Berman, alias Leo David, alias Jack Davis, alias Jack Martin, alias Jack Larson, alias Jack Lusser, alias Jack Loesser, CHARLES L. McNALLY, alias Charles McDermott, alias "Mack", D. E. HAWKINS, alias Buddy Hawkins, alias "Two Gun" Hawkins, alias D. Van Horn, alias Thomas E. O'Brien, alias Harry A. Schwartz, FRANK MURRAY, alias Buck Murray, WILSON W. BADEN, FRED BEECHER, alias Fred Beacher, MURRAY LITTMAN, ARTHUR KOCH, alias Otto Koch, DAN LEAHY, alias Laby, HENRY "DOZ" (last name being fictitious), and JOHN DOE, did unlawfully, wilfully and knowingly, combine, conspire, confederate and agree among themselves, and with Lynn Kennemer and William S. Hayes alias Wilson, and divers other persons to the Grand Jurors unknown, to unlawfully, knowingly, feloniously and wilfully transport, and cause to be transported in interstate commerce, to wit: from the Borough of Brooklyn, County of Kings, City, State and Eastern District of New

York, to the States of New Jersey, Pennsylvania, Massachusetts, Alabama and Tennessee, and in divers other places to the Grand Jurors unknown, upwards of twenty (20) motor vehicles, a more particular description of which is to the Grand Jurors unknown, which said motor vehicles had theretofore and during the times above set forth, been stolen from the true owners of said motor vehicles, at the Borough of Brooklyn, County of Kings, City, State, and Eastern District of New York, and the said defendants did further conspire, combine, confederate and agree to receive, conceal, barter and sell, the said motor vehicles, so transported, in interstate commerce, as aforesaid, knowing that the said motor vehicles had been so transported and caused to be transported in interstate commerce, and the said defendants knowing full well that the said motor vehicles had been stolen. And it was further a part of the said conspiracy, that the defendants should cause the motor numbers on the said motor vehicles above set forth, so stolen, transported, and caused to be transported, received, concealed, bartered and sold as above set forth, to be changed so that identification of the said motor vehicles could not be made by the true owners thereof. And it was further a part of the said conspiracy that the said motor vehicles so stolen, transported, and caused to be transported as aforesaid, and received, concealed, bartered, and sold as aforesaid, should be registered in the names of fictitious persons, for the purpose of enabling the said defendants to sell the said stolen motor vehicles, as if they were the actual and true owners thereof, and thus procure monetary considerations for the sale and barter of the said motor vehicles, the said defendants and each one of them knowing that the said motor vehicles were stolen from the true owners thereof; all in violation of law, and against the peace and dignity of the United States, and contrary to the form of the statute

in such case made and provided (Title 18, United States Code, Sections 88 and 408), and in pursuance of said conspiracy and for the purpose of effecting the object and purpose of the same, the said defendants did commit the following overt acts.

OVERT ACTS.

1.

That in pursuance of the said conspiracy, and for the purpose of effecting the object and purpose of the same, that on or about the 3rd day of February, 1930, at the Borough of Brooklyn, County of Kings, City, State and Eastern District of New York, the said defendants did transport and cause to be transported in interstate commerce, to wit: from the said Borough of Brooklyn, County of Kings, City, State, and Eastern District of New York, to and into Jersey City, in the State of New Jersey, a certain motor vehicle, to wit: a Lincoln Sedan, 1929 model, original motor number 59638, original serial number 59638, which said motor vehicle so described as aforesaid, had theretofore been stolen on or about December 14, 1929, from the true owner thereof, at the Borough of Brooklyn, County of Kings, City, State and Eastern District of New York.

2.

That in pursuance of the said conspiracy, and for the purpose of effecting the object and purpose of the same, that on or about the 1st day of September, 1930, at the Borough of Brooklyn, County of Kings, City, State and Eastern District of New York, the said defendants did transport, and cause to be transported in interstate commerce, a certain motor vehicle, to wit: a Buick Coupe, 1930 model, original motor number 2585324, original serial number, 2401358, which said motor vehicle was transported from the Borough of

Brooklyn, County of Kings, City, State, and Eastern District of New York, to and into Jersey City, in the State of New Jersey, which said motor vehicle had theretofore, and on or about the 9th day of June, 1930, been stolen from the true owner thereof, at the Borough of Brooklyn, County of Kings, City, State and Eastern District of New York.

3.

That in pursuance of the said conspiracy, and for the purpose of effecting the object of the same, that on or about the 10th day of July, 1930, at the Borough of Brooklyn, County of Kings, City, State and Eastern District of New York, the said defendants did transport and cause to be transported in interstate commerce, to wit: from the Borough of Brooklyn, County of Kings, City, State, and Eastern District of New York, to and into New Haven, in the State of Connecticut, a certain motor vehicle, to wit: a La Salle Sedan, 1929 model, original motor number 605189, original serial number 605189, which said motor vehicle so described as aforesaid, had theretofore been stolen on or about the 30th day of June, 1930, from the true owner thereof, at the Borough of Brooklyn, County of Kings, City, State, and Eastern District of New York.

4.

That in pursuance of the said conspiracy, and for the purpose of effecting the object and purpose of the same, that on or about the 15th day of April, 1930, at the Borough of Brooklyn, County of Kings, City, State, and Eastern District of New York, the said defendants did transport and cause to be transported in interstate commerce, to wit: from the Borough of Brooklyn, County of Kings, City, State, and Eastern District of

New York, to and into Hoboken, in the State of New Jersey, a certain motor vehicle, to wit: a Buick Coupe, 1930 model, original motor number 2514064, original serial number 2388380, which said motor vehicle so described as aforesaid, had theretofore been stolen on or about the 14th day of November, 1929, from the true owner thereof, at the Borough of Brooklyn, County of Kings, City, State, and Eastern District of New York.

5.

That in pursuance of the said conspiracy, and for the purpose of effecting the object and purpose of the same, that on or about the 25th day of May, 1930, at the Borough of Brooklyn, County of Kings, City, State, and Eastern District of New York, the said defendants did receive and conceal, and cause to be received and concealed, in a certain garage, located in the Borough of Brooklyn, County of Kings, City, State, and Eastern District of New York, a certain motor vehicle, to wit: a Packard Sedan, 1930, model, original motor number 283861, original serial number 283468, which said motor vehicle had theretofore been stolen from the true owner thereof, on or about the 19th day of May, 1930, at the Borough of Brooklyn, County of Kings, City, State, and Eastern District of New York.

6.

That in pursuance of the said conspiracy, and for the purpose of effecting the object of the same, that on or about the 31st day of May, 1930, at the Borough of Brooklyn, County of Kings, City, State, and Eastern District of New York, the said defendants did receive and conceal, and cause to be received and concealed in a certain garage, located in the Borough of Brooklyn, County of Kings, City, State, and Eastern District of New York, a certain motor vehicle, to wit: a Packard

Sedan, 1930 model, original motor number 278366, original serial number 278359, which said motor vehicle had theretofore been stolen from the true owner thereof, on or about the 30th day of May, 1930, at the Borough of Brooklyn, County of Kings, City, State, and Eastern District of New York.

7.

That in pursuance of the said conspiracy, and for the purpose of effecting the object and purpose of the same, that on or about the 7th day of June, 1930, at the Borough of Brooklyn, County of Kings, City, State, and Eastern District of New York, the said defendants did receive and conceal, and cause to be received and concealed in a certain garage, located in the Borough of Brooklyn, County of Kings, City, State, and Eastern District of New York, a certain motor vehicle, to wit: a Packard Sedan, 1930 model, original motor number 184711, original serial number 184633, which said motor vehicle had theretofore been stolen from the true owner thereof, on or about the 2nd day of June, 1930, at the Borough of Brooklyn, County of Kings, City, State, and Eastern District of New York.

8.

That in pursuance of the said conspiracy, and for the purpose of effecting the object and purpose of the same, that on or about the 25th day of May, 1930, at the Borough of Brooklyn, County of Kings, City, State, and Eastern District of New York, the said defendants did transport, and cause to be transported in interstate commerce, a certain motor vehicle, to wit: a Packard Sedan, 1930 model, original motor number 283861, original serial number 283468, which said motor vehicle was transported from the Borough of Brooklyn, County of Kings, City, State, and Eastern

District of New York, to and into the City of Athens, in the State of Alabama, which said motor vehicle had theretofore, and on or about the 19th day of May, 1930, been stolen from the true owner thereof, at the Borough of Brooklyn, County of Kings, City, State, and Eastern District of New York.

9.

That in pursuance of the said conspiracy, and for the purpose of effecting the object and purpose of the same, that on or about the 17th day of July, 1930, at the Borough of Brooklyn, County of Kings, City, State, and Eastern District of New York, the said defendants did transport, and cause to be transported in interstate commerce, a certain motor vehicle, to wit: a Packard Sedan, 1930 model, original motor number 293914, original serial number 295993, which said motor vehicle was transported from the Borough of Brooklyn, County of Kings, City, State, and Eastern District of New York, to and into the town of Doylestown, State of Pennsylvania, which said motor vehicle had theretofore, and on or about the 7th day of July, 1930, been stolen from the true owner thereof, at the Borough of Brooklyn, County of Kings, City, State and Eastern District of New York.

10.

That in pursuance of the said conspiracy, and for the purpose of effecting the object and purpose of the same, that on or about the 17th day of July, 1930, the said defendants, at the Borough of Brooklyn, County of Kings, City, State, and Eastern District of New York, did barter and sell a certain motor vehicle, to wit: a Packard Sedan, 1930 model, original motor number 293914, original serial number 295993, which said motor vehicle had been transported in interstate commerce by the said defendants, and which said motor

vehicle had been stolen from the true owner thereof, on or about the 7th day of July, 1930.

SECOND COUNT

AND THE GRAND JURORS AFORESAID ON THEIR OATHS AFORESAID DO FURTHER PRESENT THAT

JACK BERMAN,
alias Leo Berman,
alias Leo David,
alias Jack Davis,
alias Jack Martin,
alias Jack Larson,
alias Jack Lusser,
alias Jack Loesser,
CHARLES L. McNALLY,
alias Charles McDermott,
alias "Mack",
D. E. HAWKINS,
alias Buddy Hawkins,
alias "Two Gun" Hawkins,
alias D. Van Horn,
alias Thomas E. O'Brien,
alias Harry A. Schwartz,
FRANK MURRAY,
alias Buck Murray,
WILSON W. BADEN,
FRED BEECHER,
alias Fred Beacher,
MURRAY LITTMAN,
ARTHUR KOCH,
alias Otto Koch,
DAN LEAHY,
alias Laby,
HENRY "DOE" (last name being fictitious),

and

JOHN DOE,

hereinafter called the defendants, on or about the 9th day of October, 1929, at the Borough of Brooklyn, County of Kings, City, State, and Eastern District of New York, and within the jurisdiction of this Court did unlawfully, knowingly, and wilfully transport, and cause to be transported in interstate commerce, to wit: from the Borough of Brooklyn, County of Kings, City, State, and Eastern District of New York, to the City of Hohokus, in the State of New Jersey, a certain motor vehicle, to wit: a Cadillac Town Sedan, 1929 model, original motor number 334712, original serial number 334712, which said motor vehicle had theretofore been stolen on or about the 30th day of September, 1929 from the true owner thereof, at the Borough of Brooklyn, County of Kings, City, State, and Eastern District of New York, and which said motor vehicle so described as aforesaid, was unlawfully, knowingly, illegally, and wilfully, transported, and caused to be transported in interstate commerce, by the said defendants, said defendants then and there well knowing the said motor vehicle to have been stolen; against the peace and dignity of the United States, and contrary to the form of the statute in such case made and provided (Title 18, United States Code, Section 408).

THIRD COUNT

AND THE GRAND JURORS AFORESAID ON THEIR OATHS AFORESAID DO FURTHER PRESENT THAT

JACK BERMAN,
alias Leo Berman,
alias Leo David,
alias Jack Davis,
alias Jack Martin,
alias Jack Larson,
alias Jack Lusser,
alias Jack Loesser,

CHARLES L. McNALLY,
alias Charles McDermott,
alias "Mack",
D. E. HAWKINS,
alias Buddy Hawkins,
alias "Two Gun" Hawkins,
alias D. Van Horn,
alias Thomas E. O'Brien,
alias Harry A. Schwartz,
FRANK MURRAY,
alias Buck Murray,
WILSON W. BADEN,
FRED BEECHER,
alias Fred Beacher,
MURRAY LITTMAN,
ARTHUR KOCH,
alias Otto Koch,
DAN LEAHY,
alias Laby,
HENRY "DOE" (last name being fictitious)

and

JOHN DOE,

hereinafter called the defendants, on or about the 12th day of February, 1930, at Jersey City, in the State of New Jersey, did unlawfully, knowingly, and wilfully, sell a certain motor vehicle, to wit: a Lincoln Sedan, 1929 model, original motor number 59638, original serial number 59638, which said motor vehicle had theretofore been transported in interstate commerce, from the Borough of Brooklyn, County of Kings, City, State, and Eastern District of New York, to Jersey City, in the State of New Jersey, and which said motor vehicle had theretofore been stolen from the true owner thereof, on or about the 14th day of December, 1929, at the Borough of Brooklyn, County of Kings, City,

State, and Eastern District of New York, the said defendants knowing that the said car so sold as aforesaid, had been stolen and transported in interstate commerce; against the peace and dignity of the United States, and contrary to the form of the statute in such case made and provided (Title 18, United States Code, Section 408).

HOWARD W. AMELI
United States Attorney for the
Eastern District of New York.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA vs. CHARLES L. McNALLY, et'al	Cr. #28944 Vio: Title 18, U. S. C. Secs. 88 and 408.

June 30, 1931—Indictment filed.

Nov. 25, 1931—Campbell J, Case called defts. on trial present. Jury return and render a verdict of guilty as to deft. McNally on 1st, 2nd & 3rd counts.

Nov. 30, 1931—Campbell J, Defts. Berman, McNally, Littman & Fioto present.
Deft. McNally sentenced to be imprisoned for 2 years on count one, 4 years on count two and 4 years on count three at a Penitentiary or Prison Camp without costs, sentence on count one to run concurrently with sentence on counts two and three, sentence on counts two and three to run consecutively.

EASTERN DISTRICT OF NEW YORK, *ss.:*

I, Percy G. B. Gilkes, Clerk of the District Court of the United States for the Eastern District of New York, do hereby certify that the foregoing is a true ~~copy of an original~~ extract from the Docket Entries ~~on file and~~ remaining of record in my office.

IN TESTIMONY WHEREOF, I have caused the Seal of said Court to be hereunto affixed, at the

Borough of Brooklyn, in the Eastern District of New York, this 15th day of December, in the year of our Lord one thousand nine hundred and ~~twenty~~ thirty-two and of the Independence of the United States the one hundred and ~~forty~~ fifty-seventh.

Percy G. B. Gilkes, *Clerk.*
By S. R. Feuer, *Deputy Clerk.*

Cr. 28944.

District Court of the United States
Eastern District of New York

THE UNITED STATES OF AMERICA

vs.

JACK BERMAN, CHARLES L. MCNALLY, D. E. HAWKINS, FRANCIS B. MURRAY, WILSON W. BADEN, FRED BEECHER, MURRAY LITTMAN, ARTHUR KOCH, DAN LEAHY, HENRY "DOE" (last name being fictitious and their aliases) and JOHN DOE, Defendants.

INDICTMENT

Title 18, United States Code.
Sections 88 and 408.

HOWARD W. AMELI,
United States Attorney, Federal Building, Borough of Brooklyn, New York City, N. Y.

A TRUE BILL.

THOMAS F. SHANNON
Foreman

Filed June 30, 1931.

PETITIONER'S EXHIBIT "B."

EASTERN DISTRICT OF NEW YORK, *ss.:*

I, Percy G. B. Gilkes, Clerk of the District Court of the United States for the Eastern District of New York, do hereby certify that the foregoing is a true copy of an original Indictment with Endorsements on file and remaining of record in my office.

In Testimony Whereof, I have caused the Seal of said Court to be hereunto affixed, at the Borough of Brooklyn, in the Eastern District of New York, this 13th day of December in the year of our Lord one thousand nine hundred and ~~twenty~~ thirty two and of the Independence of the United States the one hundred and ~~forty~~ fifty-seventh.

Percy G. B. Gilkes, *Clerk.*
By S. R. Feuer, *Deputy Clerk.*

DISTRICT COURT OF THE UNITED STATES OF AMERICA

EASTERN DISTRICT OF NEW YORK

At a Stated Term of the District Court of the United States of America, for the Eastern District of New York, begun and held in the Borough of Brooklyn, City of New York, within and for the District aforesaid, on the third day of June, in the year of our Lord one thousand nine hundred and thirty-one, and continued by adjournment to and including the thirtieth day of June in the year of our Lord one thousand nine hundred and thirty-one.

EASTERN DISTRICT OF NEW YORK, *ss.*:

The Grand Jurors of the United States of America, within and for the district aforesaid, on their oaths present that

JACK BERMAN,
alias Leo Berman,
alias Leo David,
alias Jack Davis,
alias Jack Martin,
alias Jack Larson,
alias Jack Lusser,
alias Jack Loesser,
CHARLES L. MCNALLY,
alias Charles McDermott,
alias "Mack",
HARRY F. BABST,
and
SAMUEL LEIGHTON FROOKS,

hereinafter called the defendants, on or about and between the 24th day of July, 1930, up to and including the 15th day of February, 1931, at the Borough of Brooklyn, County of Kings, City, State, and Eastern District of New York, and within the jurisdiction of this Court, at the Borough of Manhattan, City, State, and Southern District of New York, and in the City of Dallas, in the State of Texas, and in the State of New Jersey, and in divers other places to the Grand Jurors unknown, did unlawfully, wilfully, knowingly, and feloniously, conspire, combine, confederate, and agree among themselves, and with William S. Hayes, alias Wilson, and Cecil Downs, and divers other persons to the Grand Jurors unknown, to unlawfully, wilfully, and knowingly violate Title 18, United States Code, Section 408, in the following manner, that is to say: that at the times aforesaid, and at the places

aforesaid, the aforementioned defendants, JACK BERMAN, alias Leo Berman, alias Leo David, alias Jack Davis, alias Jack Martin, alias Jack Larson, alias Jack Lusser, alias Jack Loesser, CHARLES L. MCNALLY, alias Charles McDermott, alias "Mack", HARRY F. BABST, and SAMUEL LEIGHTON FROOKS, did unlawfully, wilfully, and knowingly, combine, conspire, confederate, and agree, among themselves, and with William S. Hayes, alias Wilson, and Cecil Downs, and divers other persons to the Grand Jurors unknown, to unlawfully, knowingly, feloniously, and wilfully, transport, and cause to be transported in interstate commerce, to wit: from the Borough of Brooklyn, County of Kings, City, State, and Eastern District of New York, to the State of Texas, and to the State of New Jersey, a certain motor vehicle, to wit: a Buick Sedan, 1930 model, original motor number 2609887, original serial number 2431898, and which said motor vehicle had theretofore, and during the times aforesaid, to wit: on or about the 24th day of July, 1930, been stolen from William Soshnick, the true owner of said motor vehicle, at the Borough of Brooklyn, County of Kings, City, State, and Eastern District of New York. And it was further a part of the said conspiracy, that the said defendants should receive, conceal, barter, and sell, the said motor vehicle so illegally transported in interstate commerce, as aforesaid, all of the said defendants knowingly full well that the said motor vehicle so described as aforesaid, so transported, received, concealed, bartered, and sold, as aforesaid, had been stolen, as aforesaid. And it was further a part of the said conspiracy that the defendants should cause the motor number on the said motor vehicle to be changed, so that identification of the said motor vehicle could not be made by the true owner thereof. And it was further a part of the said conspiracy that the said motor vehicle should be registered in the name of a fictitious person, for the pur-

pose of enabling the said defendants to barter, sell, and dispose of, and to receive, and conceal the said motor vehicle, as if the defendants were the true and actual owners thereof, all of the said defendants knowing that the said motor vehicle had been stolen from the true owner thereof; all in violation of law, and against the peace and dignity of the United States, and contrary to the form of the statute in such case made and provided (Title 18, United States Code, Sections 88 and 408), and in pursuance of said unlawful conspiracy, and for the purpose of effecting the object and purpose of the same, the said defendants did commit the following overt acts:

OVERT ACTS.

1.

That in pursuance of the said conspiracy, and for the purpose of effecting the object and purpose of the same, that on or about the 23rd day of October, 1930, the said defendants did unlawfully, illegally, and feloniously, transport a certain motor vehicle, to wit: a Buick Sedan, 1930 model, original motor number 2609887, original serial number 2431898, from the Borough of Manhattan, City, State, and Southern District of New York, to the City of Long Branch, in the State of New Jersey, the said motor vehicle having been theretofore, and on the 24th day of July, 1930, stolen from the true owner thereof, at the Borough of Brooklyn, County of Kings, City, State, and Eastern District of New York.

2.

That in pursuance of the said conspiracy, and for the purpose of effecting the object and purpose of the same, that on or about the 9th day of August, 1930, at the Borough of Brooklyn, County of Kings,

City, State, and Eastern District of New York, the said defendants did transport, and cause to be transported in interstate commerce, a certain motor vehicle, to wit: a Buick Sedan, 1930 model, original motor number 2609887, original serial number 2431898, which said motor vehicle was transported, and cause to be transported, from the Borough of Brooklyn, County of Kings, City, State, and Eastern District of New York, to and into the City of Dallas, in the State of Texas, which said motor vehicle, had theretofore, and on or about the 24th day of July, 1930, been stolen from the true owner thereof, at the Borough of Brooklyn, County of Kings, City, State, and Eastern District of New York.

3.

That in pursuance of the said conspiracy, and for the purpose of effecting the object and purpose of the same, that on or about the 23rd day of October, 1930, at the Borough of Manhattan, City, State, and Southern District of New York, the said defendants did, with the intent and purpose to conceal the transfer and transportation of a certain motor vehicle, to wit: a Buick Sedan, 1930 model, original motor number 2609887, original serial number 2431898, make, and cause to be made, a false and fictitious bill of sale, purporting to transfer title of the said motor vehicle from one, Cecil Downs, to an unnamed person.

4.

That in pursuance of the said conspiracy, and for the purpose of effecting the object and purpose of the same, that on or about the 16th day of January, 1931, at the Borough of Manhattan, City, State, and Southern District of New York, the said defendants did receive and conceal a certain motor vehicle, to wit: a

Buick Sedan, 1930 model, original motor number 2609887, original serial number 2431898, which said motor vehicle had theretofore been transported in interstate commerce, from the Borough of Brooklyn, County of Kings, City, State, and Eastern District of New York, to the City of Dallas, in the State of Texas, and from the City of Dallas, in the State of Texas, to the Borough of Manhattan, City, State, and Southern District of New York, and from the Borough of Manhattan, City, State, and Southern District of New York, to the City of Long Branch, in the State of New Jersey, and from the City of Long Branch in the State of New Jersey, to the Borough of Manhattan, City, State, and Southern District of New York, the said motor vehicle having been, on or about the 24th day of July, 1930, stolen from the true owner thereof, at the Borough of Brooklyn, County of Kings, City, State, and Eastern District of New York.

HOWARD W. AMELI,
United States Attorney for the Eastern District of New York.

Cr. #28945

DISTRICT COURT OF THE UNITED STATES
EASTERN DISTRICT OF NEW YORK

The United States of America

vs.

Jack Berman, alias Leo Berman, alias Leo David, alias Jack Davis, alias Jack Martin, alias Jack Larson, alias Jack Lusser, alias Jack Loesser.
Charles L. McNally, alias Charles McDermott, alias "Mack",
Harry F. Babst and Samuel Leighton Frooks,
Defendants.

INDICTMENT

Title 18, United States Code, Sections 88 and 408.

HOWARD W. AMELI,
United States Attorney, Federal Building, Borough of Brooklyn, New York City, N. Y.

A TRUE BILL.

THOMAS F. SHANNON
Foreman.

Filed June 30, 1931.

July-13-1931—INCH J.—Defendants Berman, McNally & Frooks arraigned each plea not guilty bail fixed at $3000 each as to Berman & McNally and $500—as to Frooks Defendants ordered to return Aug-5-1931—Case marked peremptorily against the Government.

July-15-1931—Before INCH J.—Defendant Babst arraigned plea not guilty bail fixed at $2000—ordered to return Aug-5-1931.

Aug-5-1931—SHEPPARD J.—Defendants present—ordered to return September-2-1931 case marked peremptory against the government.

Sept- 2-1931—SHEPPARD J.—Defendants present ordered to return Sept-8-1931.

" - 8- " —SHEPPARD J.—Case called and referred to Judge Byers.

" - 8- " —Before BYERS J.—Defendants present ordered to return September-15th-1931.

" -15- " —Before BYERS J.—Defendants present trial ordered and adjourned to Sept-16-1931.

" -16- " —Before BYERS J.—Defendants present trial continued and adjourned to Sept-17-1931.

" -17- " —Before BYERS J.—Defendants present trial continued and adjourned to Sept-18-1931.

" -18- " —Before BYERS J.—Defendants present trial continued and adjourned to Sept-22-1931.

" -22- " —Before BYERS J.—Defendants present trial continued and adjourned to Sept-23-1931.

" -23- " —Before BYERS J.—Defendants present trial continued and adjourned to Sept-24-1931 at 11 A. M.

Sept.-24-1931—Byers, J.—Case called—Defendants present. Trial resumed and adjourned to Sept-25-1931.

" -25- " —Byers J.—Trial resumed, defendants present, Jury render a verdict of guilty as to defendants Berman & McNally and not guilty as to defendants Babst and Frooks. Jury polled on motion for defendants. Berman and McNally remanded to September-28-1931- for sentence. Defendants Babst and Frooks discharged.

" -28- " —Before Byers J.—Defendants Berman and McNally present. Motion to set aside verdict and in arrest of judgement denied. Defendant Berman sentenced to be imprisoned for 23 months at a Penitentiary or Prison Camp, without costs and sentence to date from July 13-1931- Defendant McNally sentenced to be imprisoned for 2 years at a Penitentiary or Prison Camp, without costs. Writ of Commitment for Berman issued.

Dec-10-1931—Before Moscowitz J.—Defendant McNally present remanded to custody of Marshall for execution of sentence.

PETITIONER'S EXHIBIT "C."

EASTERN DISTRICT OF NEW YORK, ss:

I, Percy S. B. Gilkes, Clerk of the District Court of the United States for the Eastern District of New York, do hereby certify that the ~~foregoing~~ annexed is a true copy of an original writ of Commitment with marshals Return on file and remaining of record in my office.

IN TESTIMONY WHEREOF, I have caused the Seal of said Court to be hereunto affixed, at the Borough of Brooklyn, in the Eastern District of New York, this 13th day of December, in the year of our Lord one thousand nine hundred and ~~twenty~~ thirty two and of the Independence of the United States the one hundred and ~~forty~~ fifty-seventh.

PERCY G. B. GILKES, *Clerk.*
By S. R. FEUER, *Deputy Clerk.*

WARRANT OF COMMITMENT

THE PRESIDENT OF THE UNITED STATES OF AMERICA

To the Marshal of the United States for the Eastern District of New York, and to his Deputies or any or either of them, and the Attorney General or his authorized Representatives

GREETING:

WHEREAS, CHARLES L. MCNALLY now stands convicted before the District Court of the United States for the Eastern District of New York of having within

the said District on or about and between the 1st day of September, 1929, up to and including the date of the filing June 30, 1931, of this indictment, at the Borough of Brooklyn, County of Kings, City, State, and Eastern District of New York, and other places, violated Title 18, United States Code, Sections 88 and 408. (Conspiracy to transport stolen motor vehicle and cause to be transported.) contrary to the Statutes of the United States in such case made and provided;

AND WHEREAS, the said CHARLES L. McNALLY was, on the 30th day of November, 1931, at the Borough of Brooklyn, City of New York, and State of New York, by virtue of said conviction, sentenced by the said Court to be imprisoned for the term of Two (2) years on count one, Four (4) years on count two, Four (4) years on count three. Without costs, sentence on count one to run concurrently with sentence on count two and three. Sentence on counts two and three to run consecutively. the said sentence to be executed in Penitentiary or Prison Camp and to date from the 30th day of November, 1931.

WITNESS, the Honorable MARCUS B. CAMPBELL, Judge of the District Court of the United States for the Eastern District of New York, and the seal of said Court, at the Borough of Brooklyn, City of New York, in the Eastern District of New York, this 30th day of November in the year of our Lord one thousand nine hundred and thirty-one

PERCY G. B. GILKES
Clerk.
By JOHN R. SCOTT, Jr.
Deputy Clerk.

Crim. #28944

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

The United States

v.

Charles L. McNally

WRIT OF COMMITMENT

I hereby depute
to execute the within Writ

Dated , 192

.....
U. S. Marshal,
Eastern District of New York.

Filed. Dec. 31, 1931.

In obedience to the within Writ, I did, on the 23rd day of Dec., 1931. deliver to the warden of Leavenworth Prison at Kansas, the body of CHARLES L. MCNALLY I certify that at the same time I delivered to said warden a copy of the within Writ, showing to him this original.

Dated 30th Nov., 1931

FRED. S. PULVER,
U. S. Marshal,
Eastern District of New York.

I. M. ROSENBLUM D. U. S. Marshall.

PETITIONER'S EXHIBIT "D."

EASTERN DISTRICT OF NEW YORK, ss.

I, Percy G. B. Gilkes, Clerk of the District Court of the United States for the Eastern District of New York, do hereby certify that the ~~foregoing~~ annexed is a true copy of an original Writ of Commitment with marshals Return on file and remaining of record in my office.

In Testimony Whereof, I have caused the Seal of said Court to be hereunto affixed, at the Borough of Brooklyn, in the Eastern District of New York, this 13th day of December in the year of our Lord one thousand nine hundred and ~~twenty~~ thirty two and of the Independence of the United States the one hundred and ~~forty~~ fifty-seventh.

PERCY G. B. GILKES, *Clerk.*
By S. R. FEUER, *Deputy Clerk.*

WARRANT OF COMMITMENT

THE PRESIDENT OF THE UNITED STATES OF AMERICA

To the Marshal of the United States for the Eastern District of New York, and to his Deputies or any or either of them, and the Attorney General or his authorized Representative.

GREETING:

WHEREAS, CHARLES L. MCNALLY, alias Charles McDermott, alias "Mack" now stands convicted before the District Court of the United States for the Eastern District of New York of having within the said District

on or about the 24th day of July, 1930, up to and including the 15th day of February, 1931, at the Borough of Brooklyn, County of Kings, City, State and Eastern District of New York, and within the jurisdiction of this Court, at the Borough of Manhattan, City, State and Southern District of New York, and in the City of Dallas, in the State of Texas, and in the State of New Jersey, and in divers other places to the Grand Jurors unknown, violated, Title 18, United States Code, Sections 88 and 408. (Transporting Stolen Motor Vehicle) contrary to the Statutes of the United States in such case made and provided;

AND WHEREAS, the said CHARLES L. MCNALLY, alias Charles McDermott, alias "Mack" was, on the 28th day of September, 1931, at the Borough of Brooklyn, City of New York, and State of New York, by virtue of said conviction, sentenced by the said Court to be imprisoned for the term of Two (2) years, without costs. the said sentence to be executed in a Penitentiary or Prison Camp and to date from the 10th day of December, 1931;

WITNESS, the Honorable MARCUS B. CAMPBELL, Judge of the District Court of the United States for the Eastern District of New York, and the seal of said Court, at the Borough of Brooklyn, City of New York, in the Eastern District of New York, this 10th day of December in the year of our Lord one thousand nine hundred and thirty-one

PERCY G. B. GILKES
Clerk.

By J. G. COCHRAN
Deputy Clerk.

Crim. #28945

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

The United States

vs.

Charles L. McNally, etc.

R

WRIT OF COMMITMENT

I hereby depute
to execute the within Writ

Dated , 192

.....
U. S. Marshal,
Eastern District of New York.

Filed Dec. 31, 1931.

In obedience to the within Writ, I did, on the 23rd day of Dec. 1931. deliver to the warden of Leavenworth Prison at Kansas the body of Chas. L. McNally etc I certify that at the same time I delivered to said warden a copy of the within Writ, showing to him this original.

Dated 10th Dec., 1931

FRED. S. PULVER
U. S. Marshal,
Eastern District of New York.

I. M. Rosenblum D. U. S. Marshall

CHRONOLOGY OF PROCEEDINGS IN NEW YORK COURT.

July 1, 1931. Before Inch J. Deft. arraigned plea not guilty bail fixed at $2000, ordered to return Aug. 5, 1931.

July 8, 1931. Deft. Baden arraigned, plea not guilty, bail fixed at $2500—ordered to return Aug. 5, 1931.

July 13, 1931. Inch J. Defts. Berman, McNally and Littman arraigned plea not guilty bail fixed at $3000—as to Berman, $2000 as to McNally and $5000—as to Littman. Defendants ordered to return Aug. 5, 1931 Defts. Hawkins, Murray, Beecker and Fioto not present, bench warrants ordered (Deft. Fioto arraigned plea not guilty bail fixed at $2500—ordered to return Aug. 5, 1931.

July 18, 1931. Before Galston J. Deft. Leahy arraigned plea not guilty. Bail fixed at $1000 ordered to return Aug. 5, 1931.

Aug. 5, 1931. Before Sheppard J. Defts. Berman, man, McNally, Baden, Littman, and Koch present ordered to return Sept. 2, 1931. Defts. Hawkins, Murray, Beecher, and Leahy not present defaults noted.

Sept. 2, 1931. Sheppard J.—Defts. Berman, McNally, Baden and Littman present ordered to return Oct. 7, 1931—Deft. Koch reported sick.

Oct. 7, 1931. Inch J. Defts. Berman, McNally, Baden, Littman and Leahy present ordered to return Oct. 22, 1931.

Oct. 22, 1931. Before Inch J. Defts. Berman, McNally, Baden, Littman, Koch and Leahy present ordered to return Oct. 30, 1931. Defts. Fioto not present.

Oct. 30, 1931. Before Inch J. Defts. Berman, McNally, Baden, Littman, Koch, Leahy and Fioto present ordered to return Nov. 16, 1931.

Nov. 16, 1931. Campbell J.—Case called Defts. Berman, McNally, Baden, Littman, Koch, Leahy, and Fioto present. Mr. Singer moves to sever the indictment as against Hawkins, Murray, Beecher and "John Doe". Motion granted. Indictment severed as against the defts.—Hawkins, Murray, Beecher and John Doe." Trial ordered as against Berman, McNally, Baden, Littman, Koch, Leahy and Fiota and adjourned to Nov. 17, 1931.

Nov. 17, 1931. Campbell, J. Case called, Defts. present, trial resumed and adjourned to November 18, 1931 at 10:45 A. M.

Nov. 18, 1931. Campbell J. Case called, Defts. on trial present, trial resumed and adjourned to Nov. 19, 1931.

Nov. 19, 1931. Campbell J. Case called, Defts. on trial present, trial resumed and adjourned to Nov. 20, 1931.

Nov. 20, 1931. Campbell, J. Case called, defts on trial present, trial resumed and adjourned to Nov. 21, 1931.

Nov. 21, 1931. Campbell J. Case called defts. on trial present, trial resumed. Mr. Cowan moves to dismiss the 1st count of the indictment as to all defts. Motion denied Mr. Cowin moves to dismiss the 2nd and 3rd counts of the indictment as to all defts. on consent of Mr. Singer the motion to dismiss 2nd count of the indictment as against Baden, Koch, Leahy, Fioto and Littman is granted, also on consent of Mr. Singer the motion to dismiss the 3rd count of the indictment as against Baden, Koch, Leahy, Fioto is granted and the motion to dismiss the 2nd and 3rd counts of the indictment as against Berman, McNally, is denied and also denied on the 3rd count as against Littman. Mr. Cowin moves to strike out certain testimony motion denied.
Mr. Cowan moves for the direction of an acquittal as against all defts. Motion denied as against the defts. Berman, McNally, Koch, Fioto, Baden, and Littman and granted as against Deft. Leahy, Jury render a verdict of not guilty as against the deft. Leahy by direction of the Court. Deft. Leahy discharged, trial adjourned to Nov. 23, 1931 at 10:00 a. m.

Nov. 23, 1931. Campbell J. case called—defts. on trial present trial resumed. Deft. Berman withdraws plea of not guilty and plea guilty to count #3. Mr. Singer moves to dismiss counts #1 and 2. Motion granted. Deft. Berman remanded to Nov. 30, 1931. Trial adjourned to Nov. 24, 1931.

Nov. 24, 1931. Campbell J. Case called, Defts. on trial present trial resumed and concluded Jury unable to reach a verdict at 11:00 P. M. declares a recess to Nov. 25, at 10:30 A. M.

Nov. 25, 1931. Campbell J. case called, defts. on trial present, jury return and render a verdict of guilty as to deft. McNally on 1st, 2nd and 3rd counts, guilty as to Deft. Littman on 1st and 3rd counts guilty as to Deft. Fioto on 1st count and not guilty as to Deft. Koch on 1st count and fail to agree as to deft. Baden. Mistrial declared as to Baden Jury discharged. Mr. Elegant moves to have Jury polled as to deft. Fioto. Jury polled and each render a verdict of guilty, Mr. Cowan moves to set aside verdict as to each deft. found guilty, Motion denied Mr. Cowin moves in arrest of judgment as to each deft. found guilty. Deft. Koch discharged. Defts. McNally, Littman and Fiota remanded to Nov. 30, 1931 for sentence. Deft. Baden continued on bail to Jan. 18, 1932.

Nov. 30, 1931. Before Campbell, J. Defts. Berman, McNally, Littman and Fioto present deft. Berman sentenced to be imprisoned for 4 years on count 3, at a Penitentiary or Prison Camp without costs. Deft. McNally sentenced to be imprisoned for 2 years on count one, 4 years on count two and 4 years on count three at a Penitentiary or Prison Camp without costs sentence on count one to run concurrently with sentence on count two and three sentence on counts two and three to run consecutively. Deft. Littman sentenced to be imprisoned for 2 years on 1st count and 3 and one half years on 3rd count at a Penitentiary or Prison Camp sentence on counts 1 and 3 to run concurrently without costs. Deft. Fioto sentenced to be imprisoned for 2 years at a Penitentiary or Prison Camp on count one without costs.
Writs of commitment issued.

Jan. 4, 1932. Moscowitz, J.—deft Hawkins arraigned plea not guilty bail fixed at $2500 ordered to return Jan. 18, 1932.

Jan. 18, 1932. Galston, J. Defts. Baden and Hawkins present ordered to return Jan. 26, 1932 Deft. Murray arraigned plea not guilty bail fixed at $7500—ordered to return Jan. 26, 1932.

Jan. 26, 1932. Galston J. Defts. Baden, Hawkins and Murray present ordered to return Feb. 3, 1932.

Feb. 3, 1932. Campbell J. Defts. Baden, Hawkins and Murray present ordered to return Mar. 17, 1932.

Mar. 17, 1932. Inch J. Defts. Baden and Murray present ordered to return Mar. 29, 1932.

Mar. 29, 1932. Inch J. Defts. Baden and Murray present ordered to return April 6, 1932.

Apr. 6, 1932. Moscowitz J. Defts. Baden and Murray present ordered to return April 25, 1932.

Apr. 25, 1932. Moscowitz J. Defts. Baden and Murray pres. ordered to ret. May 4.

May 4, 1932. Galston J. Defts. Baden and Murray present ordered to return July 1, 1932.

July 1, 1932. Inch J. Defts. Baden, Murray present ordered to return July 20, 1932.

July 12, 1932. Inch J. Deft. Beecher arraigned plea guilty to count one Asst. U. S. Att'y. Singer moves to dismiss Counts 2 and 3, motion granted sentence suspended deft. Beecher placed on probation for one year without costs.

July 20, 1932. Inch J. Deft. Baden and Murray present ordered to return Sept. 7, 1932.

Sept. 7, 1932. Moscowitz, J. Deft. present ordered to return Sept. 26, 1932.

Sept. 26, 1932. Moscowitz J.—Defts. Baden and Murray present ordered to return Oct. 14, 1932.

Oct. 14, 1932. Byers J. Defts. Baden and Murray present ordered to return Nov. 16, 1932.

Nov. 16, 1932. Inch J. Defts. Baden and Murray present Ass't. U. S. Attorney—Singer moves to dismiss indictment as against Baden and Murray motion granted—defts. Baden and Murray discharged.

ORDER.

(Filed May 16, 1933.)

And now, May 16, 1933, after hearing on the within petition and rule to show cause why a writ of habeas corpus should not issue, it appearing that the ground alleged in the petition is that the court in the Eastern District of New York did not have jurisdiction to impose sentence upon the petitioner after trial and conviction in the said Eastern District of New York upon the third count of indictment No. 28944 which said third count charges the sale of a motor vehicle in Jersey City, State of New Jersey, which motor vehicle had been stolen in the Borough of Brooklyn, Eastern District of New York, and transported in interstate commerce from the Borough of Brooklyn, Eastern District of New York to Jersey City in the State of New Jersey, in violation of Title 18 U. S. C. section 408. The Court is of the opinion that there is no merit to the said contention of the petitioner for the following reasons:

First.—The National Motor Vehicle Theft Act (18 U. S. C. 408) specifically provides that any viola-

tion of the act may be punished in any district in or through which such motor vehicle has been transported or removed, and the Eastern District of New York where the petitioner was tried, convicted and sentenced, was one of the districts which under the statute, had jurisdiction.

Second.—Section 4 of the National Motor Vehicle Theft Act specifically provides "whoever shall receive, conceal, store, barter, sell or dispose of any motor vehicle moving as or which is a part of or which constitutes Interstate or Foreign Commerce . . ." and the constitutionality of this provision being dependent upon the fact that such motor vehicle must be moving as, be a part of, or constitute interstate or foreign commerce, the crime therefore involves more than one state or district and Congress has power to enact legislation such as it did in this act providing that any person violating the act might be punished in any district in or through which such motor vehicle had been transported, or removed. The Eastern District of New York where the petitioner was tried, convicted and sentenced was, in this case, such a district.

Third.—Aside from the fact that the sale of a stolen motor vehicle to come within the commerce clause of the Constitution must involve interstate transportation, as set forth above, in this case the petitioner having gone to trial, been convicted and been sentenced, cannot now raise the question for the first time on a writ of habeas corpus and cannot now complain for the reason that the right to a trial by a jury in the State where the crime has been committed, as provided in article 3, section 2, clause 3, and in amendment 6 to the Constitution of the United States, is a right which the defendant may waive, and which in this case, the petitioner did waive even if the

jurisdiction was originally in the District Court of New Jersey as contended by the petitioner. Hagner et al. v. U. S., 54 F. (2d) 446; Patton v. U. S., 281 U. S. 276-299.

It is accordingly ordered that the petition be and the same is hereby dismissed and the rule granted thereon discharged.

ALBERT W. JOHNSON,
United States District Judge.

ASSIGNMENT OF ERRORS.

(Filed August 11, 1933.)

To the Honorable the Judges of the Circuit Court:

Now, this eleventh day of August, 1933, comes Charles L. McNally, by his attorney, Nathan Fink, Esq., and in connection with his petition for an appeal herein says that in the aforesaid order manifest error has intervened to his prejudice, to wit:

First.—The Court erred in making the following order, to wit:

> "It is accordingly ordered that the petition be and the same is hereby dismissed and the rule granted thereon is discharged.
>
> ALBERT W. JOHNSON,
> *United States District Judge.*"

Second.—The Court erred in not issuing the writ of habeas corpus and not discharging the petitioner from the custody of the warden of the aforesaid penitentiary as to the service of the alleged invalid sentence of four years imprisonment on count three of indictment No. 28944, as prayed for in said petition.

WHEREFORE, the appellant prays that the order of the United States District Court in and for the Middle District of Pennsylvania, made and entered herein in the office of the clerk of the said court on May 16, 1933, discharging the order to show cause and dismissing the petition for a writ of habeas corpus, be reversed, and that the cause be remitted to the said lower court with instructions to discharge the said Charles L. McNally from the custody of the said warden of the aforesaid penitentiary as to the service of the invalid sentence of four years imprisonment imposed upon count three of indictment No. 28944, by directing the issuance of a writ of habeas corpus, as prayed for in said petition.

NATHAN FINK,
Attorney for Appellant.

Dated August 11, 1933.

CITATION.

(Filed August 25, 1933.)

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE MIDDLE DISTRICT OF PENNSYLVANIA.

UNITED STATES OF AMERICA, *ss.:*

THE PRESIDENT OF THE UNITED STATES,

To Henry C. Hill, Warden, United States Penitentiary, Lewisburg, Pennsylvania,

GREETING:

You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals for the Third Circuit, to be holden at the City of Philadelphia on the first Monday of October, 1933, pursuant to appeal and assignment of errors filed in the Office of the Clerk of the District Court of the United States for the Middle District of Pennsylvania, wherein Charles L. McNally is the appellant and you are the appellee, to show cause, if any there be, why the order rendered against said Charles L. McNally, as in the said appeal and assignment of errors mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf, and to receive and abide by such order as said United States Circuit Court of Appeals for the Third Circuit may see fit to make in the premises. This citation returnable within thirty days from the date hereof.

WITNESS, Hon. Albert W. Johnson, Judge of the United States District Court in and for the Middle District of Pennsylvania, this twenty-fifth day of August, 1933.

(Seal)

S. W. HOFFORD,
Clerk.

By H. F. KAUFMAN,
Deputy Clerk.

Now August 25, 1933, service admitted and copy received of the within citation.

H. C. HILL.

IN THE
UNITED STATES CIRCUIT COURT
OF APPEALS
FOR THE THIRD CIRCUIT
No. 5257. October Term, 1933

CHARLES L. McNALLY,
Appellant,

vs.

HENRY C. HILL, WARDEN OF UNITED STATES PENITENTIARY, LEWISBURG, PA.,
Appellee.

And afterwards, to wit, the 3d day of November, 1933 come the parties aforesaid by their counsel aforesaid, and this case being called for argument sur pleadings and briefs, before the Honorable Joseph Buffington, Honorable Victor B. Woolley and Honorable J. Warren Davis, Circuit Judges, and the Court not being fully advised in the premises, takes further time for the consideration thereof,

And afterwards, to wit, on the 13th day of February, 1934 come the parties aforesaid by their counsel aforesaid, and the Court, now being fully advised in the premises, renders the following decision:

OPINION.

(Filed February 13, 1934.)

Before BUFFINGTON, WOOLLEY and DAVIS, *Circuit Judges.*

WOOLLEY, *Circuit Judge.*

McNally, with others, was tried, convicted and, upon nearby days, was sentenced on all counts of two indictments framed under the Conspiracy Act and the National Motor Vehicle Theft Act, Sections 1-5 of the

Act of October 29, 1919, 41 Stat. 324, embodied in Section 408 of Title 18 U. S. C. A. Submitting to imprisonment without appeal, McNally has not complained of the sentence of two years' imprisonment imposed under one indictment containing one count which charged conspiracy to violate the cited statute, nor has he excepted in any way to the sentences under the first and second counts of the other indictment which imposed penalties of imprisonment for two and four years to run concurrently, but now, as the longest of the first three sentences is approaching its end, he has filed in the District Court a petition for a writ of habeas corpus and complains grievously of the sentence imposed under the third count of the latter indictment which called for imprisonment for a term of four years to run consecutively with the other two terms, thus extending the aggregate of the sentences from four to eight years. By his petition, he seeks release from the sentence under the third count on the ground that, thereunder, the court had no jurisdiction to try him and none to impose sentence upon him. He bases this contention on the allegation that the count does not charge an offense under the National Motor Vehicle Theft Act in that it alleges that he, with others, sold in New Jersey a motor vehicle which "had theretofore been transported in interstate commerce (from New York to New Jersey), which had theretofore been stolen from the true owner (in New York), the said defendants knowing that said car so sold as aforesaid had been stolen and transported in interstate commerce contrary" to the cited statute. In a word, his contention is that the sale in New Jersey was of a stolen motor vehicle not shown, as required by the statute, to be a part of or moving in interstate commerce at the time of sale and therefore the offense, if any, was against the law of New Jersey, triable only by a court of that state, and that his trial by a federal

district court in New York was invalid because in violation of Clause 3, Section 2 of Article III of the Constitution of the United States, which provides that: "The trial of all crimes . . . shall be held in the state where the said crime shall have been committed . . . " The learned district judge, holding that the federal trial court had jurisdiction, denied the petition and the relator, McNally, has taken this appeal which we shall entertain without committing ourselves on the question whether or not this proceeding for a writ of habeas corpus is an attempted substitute for an appeal from the judgment of sentence.

The pertinent provisions of the applicable federal statute are these:

> "Sec. 3. That whoever shall transport or cause to be transported in interstate or foreign commerce a motor vehicle, knowing the same to have been stolen, shall be punished . . . "
>
> "Sec. 4. That whoever shall receive, conceal, store, barter, sell, or dispose of any motor vehicle, moving as, or which is a part of, or which constitutes interstate or foreign commerce, knowing the same to have been stolen, shall be punished . . . "
>
> "Sec. 5. That any person violating this Act may be punished in any district in or through which such motor vehicle has been transported or removed by such offender."

The purpose of this Act, obvious on reading it and tersely stated by Mr. Chief Justice Taft in Brooks v. United States, 267 U. S. 432, 488, was to put an end to elaborately organized schemes for the theft of automobiles, ordinarily successful because of the speed with which the stolen property can, by its own power, be moved into distant police jurisdictions and made difficult of detection by that very fact.

Adverting to the fourth section of the Act, the one here in question, the Chief Justice remarked in

the Brooks case that it made "more effective the regulation contained in the third section." The third section punishes the transportation of a stolen automobile with knowledge of the theft. The fourth section punishes the receipt, the concealment, the storing, the bartering, the sale, or the disposition of such stolen vehicle, moving as interstate commerce, or as a part thereof, with knowledge of its having been stolen. Of course, this section can and does apply only to the storing or concealment (and, we think, he meant that it applies also to the other specifically forbidden acts of receipt, barter, and sale as distinguished from transportation) of a stolen automobile with knowledge of its theft, as a *final step* in the use of interstate transportation to promote the scheme of its unlawful disposition and the withholding of it from its owner.

It is clear that the Act, purposely made comprehensive so as to curb the far flung offenses to which it is directed, is based on the interstate commerce clause of the Constitution and it is equally clear that to confer jurisdiction upon a court the indictment must show the interstate character of the offending transaction, which in this case was a sale. An indictment which merely shows the sale of stolen property does not conform to the statute and does not confer jurisdiction on a federal district court.

But the statute, in order to cover the whole of the vicious practice, has defined two offenses: one, the transportation in interstate commerce of a stolen motor vehicle, which is complete without sale; the other, the receipt, sale or disposition of a stolen motor vehicle, possessing the requisite characteristic of interstate commerce, describing it in these words: "Any motor vehicle, moving as, or which is a part of, or which constitutes interstate or foreign commerce." Thus, by the two sections, the statute forbids and punishes the transportation and sale of a stolen motor vehicle in

interstate commerce from its inception by theft to its termination by sale, yet even in the sale clause (section 4) the transaction must, of course, partake of or have the characteristic of interstate commerce as a necessary jurisdictional ingredient. This, the relator says, is lacking in the third count of the indictment because it charges him, in the past tense, with the sale of a motor vehicle which (having theretofore been stolen in New York) "had theretofore been transported in interstate commerce" (from New York to New Jersey) indicating, he says, that on arriving in New Jersey it lost its characteristic of interstate commerce and thereafter became the subject of larceny and of prosecution for larceny under the laws of New Jersey alone.

Looking at the subject matter of the statute, it is certain there comes a time in the transportation of a stolen motor vehicle from one state to another when, reaching its journey's end, the motor vehicle stops and transportation ceases. If, at that moment, it loses its quality of "moving as" or "which is a part of", or "which constitutes" interstate commerce, then always would it be impossible to enforce the fourth section of the statute against the concealment or sale of a car so described. Plainly, the statute contemplates a situation where the sale is an incident to something that has gone before, the "final step" of several that have preceded it, such as theft and transportation, and when the sale is so tied up with the interstate transportation in furtherance of the scheme unlawfully to dispose of the stolen vehicle and constitutes the last step thereof, the characteristic of interstate commerce is preserved and the federal jurisdiction for trying the offense of sale is maintained. Section 4. This must be true, for the Congress meant something by prescribing as an offense the sale of a stolen motor vehicle which is impressed with the characteristic of

interstate commerce. Manifestly it did not, by the fourth section of the Act dealing with sale of an unlawfully transported motor vehicle, intend the absurd thing of denouncing a sale only when the wheels of the vehicle are turning in interstate transportation. Forbidding the sale of a stolen vehicle only when actually in transit or in motion or in flight is not sense. The Congress intended a sale of a stolen motor vehicle which, having been unlawfully moved in interstate commerce and coming to rest, continues so closely related to that commerce as to remain "as a part of" it. When an indictment and the proofs show such to be the fact, the statute gives jurisdiction to a federal district court to try the case and punish the offender, not exclusively in the jurisdiction where the transaction was completed by sale, or in the jurisdiction in which it had its inception by theft, but "in any district in or through which the motor vehicle has been transported." Section 5. This grant of jurisdiction to any one of several district courts is predicated upon and justified by the very character of the offenses of transportation and of sale, neither of which, as defined by the qualifying words, is limited to one district. Each spreads through two or more districts. The offense, however extensive territorially and however complicated actually, are in each case but one offense and when proved to have the interstate characteristic, it is, under the statute and within the sense of the legislative problem, triable in any district through which, in part, it was perpetrated.

Applying these observations to the averments of the third count of the indictment in this case as affecting interstate commerce, which are very similar, indeed almost identical, with those which were involved in United States v. Drexel, 56 Fed. (2d) 588, we are of opinion, in accord with the Circuit Court of Appeals for the Second Circuit, that the allegation, in

the past tense, that the stolen motor vehicle had, before the sale, been transported in interstate commerce, was, if a defect, rather one of form than of substance under Section 556 of Title 18 U. S. C. A., and we are also of opinion, in accord with the thought in the Drexel case, that at any rate "within Section 391 of Title 28 of U. S. C. A. (28 U. S. C. A. Sec. 391) if not strictly a formal it was certainly a 'technical defect' which did not 'affect the substantial rights of the parties'. The pleader had been inept in expressing his meaning but that meaning was clear."

The third count of the indictment in this case shows that the characteristic of interstate commerce remained in the vehicle at the time of sale. The facts were, we assume from the verdict and in default of an appeal, proved at the trial. It is, on the verdict, not disputed that the car was stolen in one district, transported to another district, there, without change of character, received by the relator, knowing it to have been stolen and transported, and by him sold, thus bringing the case on the averments of the count and on the proofs within the jurisdiction of the court that tried him.

The order denying the petition for writ of habeas corpus is affirmed.

A true Copy:

Teste:

Clerk of the United States Circuit Court of Appeals for the Third Circuit.

ORDER.

Appeal from the District Court of the United States, for the Middle District of Pennsylvania.

This cause came on to be heard on the transcript of record from the District Court of the United States, for the Middle District of Pennsylvania, and was argued by counsel.

On consideration whereof, it is now here ordered, adjudged, and decreed by this Court that the order of the said District Court denying the petition for a writ of habeas corpus in this cause be, and the same is hereby affirmed.

Philadelphia,
February 13, 1934

VICTOR B. WOOLLEY
Circuit Judge

Endorsements—

Order Affirming Order, etc.
Rec'd & Filed Feb. 13, 1934

WM. P. ROWLAND, Clerk

CLERK'S CERTIFICATE.

UNITED STATES OF AMERICA,
Eastern District of Pennsylvania, } Sct.
Third Judicial Circuit.

I. WM. P. ROWLAND, Clerk of the United States Circuit Court of Appeals, for the Third Circuit, DO HEREBY CERTIFY the foregoing to be a true and faithful copy of the original Transcript of Record and proceedings in this Court in the case of—

Charles L. McNally,
Appellant,

vs.

Henry C. Hill, Warden of United States Penitentiary, Lewisburg, Pa.,
Appellee

No. 5257

on file, and now remaining among the records of the said Court, in my office.

IN TESTIMONY WHEREOF, I have hereunto subscribed by name and affixed the seal of the said Court, at Philadelphia, this 6th day of March, in the year of our Lord one thousand nine hundred and thirty-four and of the Independence of the United States the one hundred and fifty-eighth.

[SEAL]

WM. P. ROWLAND
Clerk of the United States Circuit Court of Appeals, Third Circuit.

[fol. 62] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed May 7, 1934

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Third Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.